

AMENDED IN ASSEMBLY MAY 19, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 1601**

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**Introduced by Assembly Member Frommer**

February 21, 2003

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An act to amend Sections 18628, 19057, 19164, 19177, and 19182 of the Revenue and Taxation Code, relating to taxation.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1601, as amended, Frommer. Administration of taxes: tax shelters: penalties.

Existing law *requires that a tax shelter organized in California be subject to the California registration requirements.*

*This bill would impose the same registration requirements on tax shelters that are organized outside California but are doing business in California, deriving income from California, soliciting California taxpayers to invest, or have California investors.*

*Existing law* imposes various taxes and fees, and certain penalties and interest on late payments of those taxes and fees, and authorizes the Franchise Tax Board to make a deficiency assessment and to mail a notice of proposed deficiency assessment to a taxpayer, generally, within 4 years after the return required to be filed by the taxpayer is filed.

This bill would extend the statute of limitations applicable to the assessment of any deficiency by the Franchise Tax Board to 8 years in

the case of any return filed on or after January 1, 1999–2000, by a taxpayer who is an investor in a tax shelter, as defined.

*Existing law imposes an accuracy-related penalty on any portion of an underpayment of tax required to be shown on a return. The amount of that penalty is determined by reference to the federal income tax law, and generally equals 20% of the amount of the underpayment of tax.*

*This bill, with respect to the underpayment of tax by a taxpayer who is an investor in a tax shelter, as defined, would increase the amount of that penalty to 50% of the amount of the underpayment.*

Existing law provides specified conformity to federal income tax law with respect to penalties imposed on promoters or organizers of abusive tax shelters.

This bill would modify the federal income tax law provisions, as applied for purposes of the Personal Income Tax and the Corporation Tax Laws, to increase the amount of penalty imposed for promoting abusive tax shelters to 25% of the aggregate amount invested in the tax shelter.

Existing law requires an organizer of a tax shelter that is organized in California to furnish to the Franchise Tax Board a duplicate of the registration information required to be submitted to the Secretary of the Treasury. Existing law also imposes a penalty, by reference to the federal income tax laws, for failure to send a duplicate of the registration information to the Franchise Tax Board.

This bill would increase the amount of that penalty to 25% of the aggregate amount invested in the tax shelter.

~~Existing law imposes an accuracy-related penalty on any portion of an underpayment of tax required to be shown on a return. The amount of that penalty is determined by reference to the federal income tax law, and generally equals 20% of the amount of the underpayment of tax.~~

~~This bill, with respect to the underpayment of tax by a taxpayer who is an investor in an abusive tax shelter, as defined, would increase the amount of that penalty to 50% of the amount of the underpayment.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 18628 of the Revenue and Taxation
- 2 Code is amended to read:



18628. (a) Any person required to register a tax shelter with the Secretary of the Treasury under Section 6111 of the Internal Revenue Code ~~shall be required, if that tax shelter is organized in a California tax shelter, be required~~ to send a duplicate of that registration information to the Franchise Tax Board not later than the day on which the ~~first offering for sale of interests in that tax shelter occurs~~ *tax shelter is treated as a California tax shelter.*

(b) Any person required to register under Section 6111 of the Internal Revenue Code who receives a tax registration number from the Secretary of the Treasury shall, within 30 days after request by the Franchise Tax Board, file a statement of that registration number.

(c) Section 6111(b) of the Internal Revenue Code, relating to inclusion of tax shelter identification numbers on returns, ~~shall be applicable~~ *applies.*

(d) *For purposes of this section, the term ‘California tax shelter’ means a tax shelter that satisfies any of the following:*

- (1) It is organized in this state.*
- (2) It is doing business in this state.*
- (3) It is deriving income from sources in this state.*
- (4) One of its investors is a California taxpayer.*
- (5) It solicits investments from California taxpayers.*

SEC. 2. Section 19057 of the Revenue and Taxation Code is amended to read:

19057. (a) (1) Except in the case of a false or fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise provided. For purposes of this chapter, the term “return” means the return required to be filed by the taxpayer and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit.

(2) (A) Notwithstanding paragraph (1), in the case of a return filed by a taxpayer who is an investor in a tax shelter, as defined in subparagraph (B), every notice of a proposed deficiency assessment shall be mailed to the taxpayer within eight years after the return is filed. No deficiency shall be assessed or collected with

1 respect to the year for which the return was filed unless the notice  
2 is mailed within the eight-year period.

3 (B) For purposes of this section, “tax shelter” means a  
4 partnership or other entity, any investment plan or arrangement, or  
5 any other plan or arrangement, if ~~the primary~~ *a significant* purpose  
6 of that partnership, entity, plan, or arrangement is the avoidance  
7 or evasion of federal *or state, or both federal and state*, income tax.

8 (C) This paragraph shall apply to any return filed on or after  
9 January 1, ~~1999~~ 2000.

10 (b) The running of the period of limitations provided in  
11 subdivision (a) on mailing a notice of proposed deficiency  
12 assessment shall, in a case under Title 11 of the United States Code,  
13 be suspended for any period during which the Franchise Tax Board  
14 is prohibited by reason of that case from mailing the notice of  
15 proposed deficiency assessment and for 60 days thereafter.

16 (c) Where, within the 60-day period ending on the day on  
17 which the time prescribed in this section for the assessment of any  
18 tax imposed under Part 10 (commencing with Section 17001) or  
19 Part 11 (commencing with Section 23001) for any taxable year  
20 would otherwise expire, the Franchise Tax Board receives a  
21 written document, other than an amended return or a report  
22 required by Section 18622, signed by the taxpayer showing that  
23 the taxpayer owes an additional amount of that tax for that taxable  
24 year, the period for the assessment of an additional amount in  
25 excess of the amount shown on either an original or amended  
26 return shall not expire before the day 60 days after the day on  
27 which the Franchise Tax Board receives that document.

28 (d) If a taxpayer determines in good faith that it is an exempt  
29 organization and files a return as an exempt organization under  
30 Section 23772, and if the taxpayer is thereafter held to be a taxable  
31 organization for the taxable year for which the return is filed, that  
32 return shall be deemed the return of the organization for the  
33 purposes of this section.

34 ~~SEC. 2.—~~

35 *SEC. 3.* Section 19164 of the Revenue and Taxation Code is  
36 amended to read:

37 19164. (a) (1) An accuracy-related penalty shall be imposed  
38 under this part and shall be determined in accordance with the  
39 provisions of Section 6662 of the Internal Revenue Code, relating

1 to imposition of accuracy-related penalty, except as otherwise  
2 provided in paragraph (3).

3 (2) With respect to corporations, this subdivision shall apply to  
4 all of the following:

5 (A) All taxable years beginning on or after January 1, 1990.

6 (B) Any other taxable year for which an assessment is made  
7 after July 16, 1991.

8 (C) For purposes of this section, references in Section 6662(e)  
9 of the Internal Revenue Code and the regulations thereunder,  
10 relating to treatment of an affiliated group that files a consolidated  
11 federal return, are modified to apply to those entities required to  
12 be included in a combined report under Section 25101 or 25110.  
13 For these purposes, entities included in a combined report pursuant  
14 to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be  
15 considered only to the extent required to be included in the  
16 combined report.

17 (3) (A) With respect to a taxpayer who is an investor in an  
18 abusive tax shelter, Section 6662(a) of the Internal Revenue  
19 Code is modified by substituting “50 percent” in lieu of “20  
20 percent.”

21 ~~(B) For purposes of this section, “abusive tax shelter” means~~  
22 ~~a tax shelter, as defined in Section 6111(e) of the Internal Revenue~~  
23 ~~Code, that satisfies both of the following:~~

24 ~~(i) Is required to be registered with the Secretary of the~~  
25 ~~Treasury as provided in Section 6111(a) of the Internal Revenue~~  
26 ~~Code.~~

27 ~~(ii) Has no economic substance.~~

28 (B) For purposes of this section, ‘tax shelter’ means a  
29 partnership or other entity, any investment plan or arrangement,  
30 or any other plan or arrangement, if a significant purpose of that  
31 partnership, entity, plan, or arrangement is the avoidance or  
32 evasion of federal, state, or both federal and state, income tax.

33 (b) The modifications to Section 6662 of the Internal Revenue  
34 Code by Public Law 103-66 and Public Law 103-465 shall apply  
35 with respect to returns filed for taxable years beginning on or after  
36 January 1, 1997.

37 (c) A fraud penalty shall be imposed under this part and shall  
38 be determined in accordance with the provisions of Section 6663  
39 of the Internal Revenue Code, relating to imposition of fraud  
40 penalty.

(d) The provisions of Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply.

(e) The provisions of Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply.

~~SEC. 3.~~

SEC. 4. Section 19177 of the Revenue and Taxation Code is amended to read:

19177. (a) A penalty shall be imposed for promoting abusive tax shelters. The penalty shall be determined in accordance with the provisions of Section 6700 of the Internal Revenue Code, as modified by subdivision (b).

(b) Section 6700(a)(2) of the Internal Revenue Code is modified by substituting the phrase “25 percent of the aggregate amount invested *by all investors* in such entity or arrangement referred to in subparagraph (A)” in lieu of the phrase “the \$1,000 or, if the person establishes that it is lesser, 100 percent of the gross income derived (or to be derived) by such person from such activity.”

SEC. 4. Section 19182 of the Revenue and Taxation Code is amended to read:

19182. (a) (1) A penalty shall be imposed for failure to furnish information pursuant to Section 18628 and the penalty ~~amount~~ shall be determined in accordance with Section 6707 of the Internal Revenue Code, as modified in paragraph (2).

(2) Section 6707(a)(2) of the Internal Revenue Code is modified by substituting the phrase “25 percent of the aggregate amount invested in such tax shelter” in lieu of the phrase “the greater of (A) 1 percent of the aggregate amount invested in such tax shelter, or (B) \$500.”

(b) If the person required to register the tax shelter has complied, for federal purposes, with the requirements of Section 6111(d) of the Internal Revenue Code, relating to certain confidential arrangements treated as tax shelters, the person required to register the tax shelter shall be deemed to have complied with the requirements of Section 18628 for purposes of this part and no penalty shall be imposed under subdivision (a).

(c) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply in respect of the assessment or collection of any penalty imposed under this section.

1     *SEC. 5. If any phrase, clause, sentence, or provision of*  
2     *Section 1 of this bill is declared to be contrary to the constitution*  
3     *of any state or of the United States, or the applicability thereof to*  
4     *any government, agency, person, or circumstance is held invalid,*  
5     *the validity of the remainder of this bill and the applicability*  
6     *thereof to any other government, agency, person, or circumstance*  
7     *shall not be affected thereby.*

